

RECEIPT NUMBER
518 364

ORIGINAL

11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHNELLA RICHMOND MOSES, Personal
Representative of the Estate of
MARIE MOSES IRONS, deceased

Plaintiff,

JUDGE : Taylor, Anna Diggs
DECK : S. Division Civil Deck
DATE : 12/15/2004 @ 16:34:40
CASE NUMBER : 2:04CV74889
CMP JOHNELLA RICHMOND MOSES V
PROVIDENCE HOSP MED CTRS INC
(DH)

vs.

MAGISTRATE JUDGE VIRGINIA M. MORGAN

PROVIDENCE HOSPITAL AND MEDICAL
CENTERS, INC., a domestic nonprofit corporation.

Defendant.

JOSEPH C. SMITH (P25480)
JULIE A. GIBSON (P34619)
Smith & Gibson, P.C.
Attorney for Plaintiff
28411 Northwestern Hwy., Ste. 1275
Southfield, MI 48034
(248) 353-0600

U.S. DIST. COURT
EAST DIST. MICH.
DETROIT-PSG

04 DEC 15 P4:41

FILED

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff, JOHNELLA RICHMOND MOSES, Personal Representative of the
Estate of Marie Moses Irons, deceased (hereinafter referred to as "plaintiff"), through her
attorneys, SMITH & GIBSON, P.C., files this Complaint against the above-referenced
defendant, stating as follows:

LAW OFFICES
SMITH & GIBSON, P.C.
SUITE 1275
28411 NORTHWESTERN HIGHWAY
SOUTHFIELD, MICHIGAN 48034

(248) 353-0600

JURISDICTIONAL AVERMENTS

1. At all times relevant herein, plaintiff, the duly appointed Personal Representative of the **Estate of Marie Moses Irons**, her deceased daughter, (hereinafter "**plaintiff's decedent**" or "**Ms. Moses Irons**") was a resident of the County of Oakland, State of Michigan.

2. At all times relevant herein, defendant, **Providence Hospital and Medical Center, Inc.** (hereinafter "**Providence Hospital**" or "**the hospital**"), was a Michigan corporation holding itself out as a full-service medical facility, available to treat patients such Christopher Walter Howard (hereinafter "**Howard**"), the husband of plaintiff's decedent. **Providence Hospital** is located in the City of Southfield, County of Oakland, State of Michigan, and is a "participating hospital" within the meaning of 42 USC §1395dd(c)(2).

3. At all times pertinent herein, Providence Hospital had an emergency department, including ancillary psychiatric and/or behavior medicine services that were routinely available to the emergency department, capable of providing an appropriate medical screening examination and care to stabilize an individual's emergency medical condition.

4. This action is based upon a violation of the Emergency Medical Treatment and Active Labor Act, 42 USC 1395dd, et. seq. (hereinafter the "**EMTALA**" or "**The Act**")

and the amount in controversy otherwise exceeds the minimal jurisdiction amount of the court.

GENERAL AVERMENTS

5. On December 13, 2002, Christopher Walter Howard arrived at the emergency room of Providence Hospital located in Southfield, Michigan. A request for emergency examination and treatment was made for Howard because he was exhibiting signs and symptoms of acute mental illness, which included disorientation, severe, emotional and psychiatric changes. Howard's illness was also manifested by physical changes including, high blood pressure, nausea and vomiting.

6. Howard was seen in the emergency room and received treatment for his physical complaints. During his hospital stay, upon information and belief, defendants' physicians, Dr. Paul Lessem (hereinafter "**Dr. Lessem**") and Dr. Mitchell Djenada, (hereinafter "**Dr. Djenada**") and Margaret Miller, BSN (hereinafter "**Nurse Miller**") evaluated Howard to determine if he suffered from a psychiatric illness that required medical treatment. In addition, other health care professionals, in the fields and specialties identified above, (hereinafter "**other treating professionals**") and who are unknown to plaintiff, but known to Providence Hospital, Dr. Lessem, Dr. Djenda, and/or Nurse Miller, also were involved in evaluating Howard to determine if he suffered from a psychiatric illness that required medical treatment.

7. Dr. Lessem, Dr. Djenada, Nurse Mitchell and/or the other treating professionals received information indicating that Howard had an emergency medical condition and was an individual in need of in-hospital, psychiatric screening and care. On December 13, 2002 and thereafter, Dr. Lessem, Dr. Djenada, Nurse Mitchell and/or the other treating professionals received information indicating that Howard was a threat to and/or had made threats of physical harm to his wife, Marie Moses Irons, and other family members.

8. While in the hospital, Howard's psychiatric condition continued to deteriorate, which continued to include threats against family members, bizarre and psychotic behavior.

9. Upon information and belief, Dr. Lessem, Dr. Djenada, Nurse Mitchell and/or the other treating professionals were involved in a decision to transfer Howard from a hospital, medical floor to the secure, psychiatric unit of Providence Hospital, because they knew and/or had determined that: a) Emergency medical services were sought for Howard; b) Howard was an individual with an emergency medical condition who required immediate and emergent psychiatric, screening and treatment in a hospitalized, secured unit to stabilize his medical condition; and c) Howard's psychiatric condition would substantially deteriorate, if such immediate and emergent psychiatric treatment was not rendered to stabilize his condition before his discharge.

10. In connection with that decision, defendants, Dr. Lessem, Dr. Djenada, Nurse Mitchell and/or other treating and/or involved professionals, contacted Howard's insurance carrier to determine the availability of insurance coverage for his necessary psychiatric screening and care. Howard's insurance company advised Providence Hospital that there would be no coverage. Howard's transfer to the psychiatric care unit did not occur. He received no treatment to stabilize his emergency medical condition.

11. On December 19, 2002, Howard was discharged from the hospital. At the time of Howard's discharge, Dr. Lessem, Dr. Djenada, Nurse Mitchell and/or the other treating professionals knew, and should have known, that Howard required immediate and emergent, in-hospital, psychiatric care and treatment. Upon information and belief, defendants were aware that Howard made specific threats to harm Marie Moses Irons, and other family members. Upon information and belief, defendants were aware that Howard had the desire, intent and means to carry out the threat. However, no effort was made to treat or stabilize Howard's psychiatric condition before his discharge.

12. After being discharged from Providence Hospital with an acute psychiatric disorder that had not been stabilized, Howard murdered his wife, Marie Moses Irons, on December 29, 2002.

COUNT I
Violation of 42 USC 1395dd, et seq.
(December 19, 2002)

13. Plaintiff repeats the averments in paragraphs 1 through 12 by reference, as if fully set forth herein.

14. Under the Emergency Medical Treatment and Active Labor Act, 42 USC 1395dd, if an individual comes to a hospital and the hospital determines that the individual has an "emergency medical condition" within the meaning of the Act, the hospital must provide appropriate emergency medical screening and if it determines that an individual suffers from an emergency medical condition, provide such treatment as may be required to stabilize the medical condition before transfer or discharge of the individual, as provided by the Act.

15. The term "emergency medical condition" as used in the Act means a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ, and includes a psychiatric condition.

16. Under the Act, a medical condition is "stabilized" when no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer, or discharge, of the individual from a facility.

17. Under the Act, a participating hospital may not delay provision of an appropriate medical screening examination, or further medical screening examination and treatment necessary to stabilize the emergency medical condition in order to inquire about the individual's method of payment or insurance status.

18. Under the Act, any individual who suffers personal harm as a direct result of a participating hospital's violation of the Act may obtain damages for personal injury from the participating hospital.

19. Marie Moses Irons and the Estate of Marie Moses Irons have sustained personal harm as a direct result of Providence Hospital's violation of provisions of the Act.

20. On December 19, 2002, at the time of his discharge from Providence Hospital, Howard had an "emergency medical condition" within the meaning of the EMTALA. His "emergency medical condition" included, but was not limited to: acute, severe, emotional and psychiatric changes including disorientation, threats against family members, and other reported bizarre and psychotic behavior, which was also accompanied by physical changes like nausea and vomiting.

21. On December 19, 2002, Providence Hospital owed duties to Howard and Marie Moses Irons to: a) provide Howard with screening and treatment that was in compliance with the EMTALA; 2) refrain from discharging him in violation of the

EMTALA; and 3) avoid personal harm to Marie Moses Irons as a result of violation of the Act.

22. Providence Hospital breached its legal duties under EMTALA and is liable to the Estate of Marie Moses Irons, based on the following:

- a. After determining that Howard had an emergency medical condition, the hospital discharged Howard without conducting additional screening of his emergency, psychiatric medical condition, and without stabilizing his emergency, psychiatric medical condition;
- b. The hospital's decision to discharge Howard without stabilizing his emergency medical condition was based in whole, or in part, on his method of payment for the services and his health insurance status;

23. At all times pertinent herein, defendant had the capabilities to stabilize Howard's emergency condition before his discharge, but failed to do so.

24. As a direct and proximate result of Howard's discharge in an unstable psychiatric state, in violation of the EMTALA, Howard murdered his wife, Marie Moses Irons, on December 29, 2002.

DAMAGES

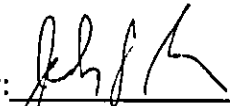
As a result of the acts and omissions of Providence Hospital as stated herein, Marie Moses Irons endured direct personal harm, resulting in her death. In addition to plaintiff, Marie Moses Irons is survived Gregory Ocie Irons and Christopher Walter Howard, Jr., her children, and Valarie Moses-Adams and Michael Moses, her siblings all of whom, as a

direct and proximate result of defendant's violation of the EMTALA, have been deprived of her society, companionship and other economic losses.

RELIEF SOUGHT

WHEREFORE, plaintiff demands judgment against defendant in whatever amount plaintiff is found to be entitled, together with interest, costs and attorneys fees.

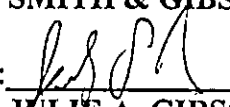
SMITH & GIBSON, P.C.

By: 
JULIE A. GIBSON (P34619)
28411 Northwestern Hwy., Ste. 1275
Southfield, Michigan 48034
(248) 353-0600

Dated: December 15, 2004

DEMAND FOR TRIAL BY JURY

Plaintiff, Johnella Moses, Personal Representative of the Estate of Marie Moses-Irons, deceased, through her attorneys, **SMITH & GIBSON, P.C.**, and hereby demands a trial by jury in the above-entitled cause.

SMITH & GIBSON, P.C.
By: 
JULIE A. GIBSON (P34619)
28411 Northwestern Hwy., Ste. 1275
Southfield, Michigan 48034
(248) 353-0600

Dated: December 15, 2004

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOHNELLA RICHMOND MOSES, Personal Representative of the Estate of MARIE MOSES IRONS, deceased

(b) County of Residence of First Listed Plaintiff OAKLAND
(EXCEPT IN U.S. PLAINTIFF CASES) 26125

(c) Attorney's (Firm Name, Address, and Telephone Number)

Smith & Gibson, P.C., 28411 Northwestern Highway, Suite 1275, Southfield, Michigan 48034 (248) 353-0600

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

DEFENDANTS

PROVIDENCE HOSPITAL and MEDICAL CENTERS, INC.

County of Residence of First Listed Defendant OAKLAND
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

ANNA DIGGS TAYLOR

MAGISTRATE JUDGE VIRGINIA M. MORGAN

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13951t) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(p)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 874 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Em. emergency Medical Treatment and Active Labor Act, 42 USC 1395 dd, et seq.

Brief description of cause:
Personal harm resulting from hospital discharge in violation of EMTALA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/15/2004

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
